

Concealment in Plain Sight?

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As I mentioned in a [recent post](#), I really enjoy working with magistrates, in part because of the excellent questions they ask. Here's one that came up recently: if a person goes into a clothing store, cuts the tags off a jacket, and starts wearing the jacket around the store, can the person be charged with shoplifting?

The starting point, of course, is the shoplifting statute, [G.S. 14-72.1](#). The statute makes it a crime to "willfully conceal[] the goods or merchandise of any store, not theretofore purchased . . . while still upon the premises" of the store. The crucial question is whether wearing an item of clothing -- openly, in plain sight -- can constitute concealment.

I don't think that there's a North Carolina case on point. But there are cases from other jurisdictions:

- *Walters v. J.C. Penney Co., Inc.*, 82 P.3d 578 (Okla. 2003) (a sweater worn in "plain view" was not "concealed" within the meaning of a shoplifting statute)
- *Henry v. Shopper's World*, 490 A.2d 320 (N.J. Super. Ct. 1985) (interpreting a statute allowing a merchant to take a person into custody upon probable cause that the person has "willfully concealed unpurchased merchandise" to encompass "items in plain view but worn or carried as though they had been purchased," such as a coat in that case)
- *State v. Evans*, 774 A.2d 539 (N.J. Super. Ct. 2001) (following *Henry* in a case where the defendant placed a hair bow in her pocket, then in her hair, before walking out of a store)
- *People v. Cortez*, 326 N.E.2d 232 (Ill. Ct. App. 1975) (stating that although "[t]here are circumstances under which wearing an object out in the open, for example, a piece of jewelry, would be a clever method of concealment," such was not the case where the defendant was wearing a heavy jacket, with the tags still on, inside a store in warm weather)

Most of the cited cases conclude that there are at least some circumstances under which openly wearing an item of clothing can constitute concealment, and that result strikes me as correct. However, just trying on an item of clothing obviously doesn't constitute shoplifting. I would advise a magistrate to charge shoplifting in such a case only if one or more additional incriminating facts were present, such as the removal of tags, the wearing of the clothing for a protracted period of time, the wearing of the clothing away from the area of the store in which that item is displayed, or an attempt to integrate the item into an existing outfit.

If you know of additional cases on point, have experience with a case involving relevant facts, or have something else to add, please post a comment.